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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 LARRY LLOYD,

8 Plaintiff,

9 v.

No. C09-5734 BHS/KLS

10 CHIEF MICHAEL POWELL,  
11 SERGEANT ED KLAHN,  
12 CORRECTIONAL OFFICER PROSE,  
DOCTOR PHYSICIAN FREEHA F.  
BOKHARI, M.D.,

13 Defendants.

**REPORT AND RECOMMENDATION**  
**Noted for: November 26, 2010**

14 Before the court is the Motion for Summary Judgment of Fork City Defendants Mike  
15 Powell, Ed Klahn and Lex Prose. ECF No. 86.<sup>1</sup> Plaintiff filed a response. ECF No. 112-1.  
16 Fork City Defendants filed a reply. ECF No. 115. Plaintiff filed "Objections" to Fork City  
17 Defendants' reply. ECF No. 121.

18 Having carefully reviewed the motion, opposition, supporting affidavits and evidence,  
19 and balance of the record, the undersigned finds that the motion should be granted as Plaintiff  
20 has failed to establish a violation of his constitutional rights under 42 U.S.C. § 1983.

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22 **SUMMARY OF CASE**

23 Plaintiff Larry Lloyd claims that he contracted food poisoning from a "T.V. Style  
24 Dinner" served to him at the Forks City Jail on November 15, 2008. He was taken to the Forks  
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26 <sup>1</sup> Plaintiff's claims against the treating physician at the Forks Community Hospital have been dismissed with  
prejudice. ECF No. 75.

1 Community Hospital where he was treated, kept for observation, and discharged the next day  
2 after his symptoms improved and test results indicated no cause for further hospitalization.

3 Mr. Lloyd filed suit against Mike Powell, Chief of Police for the City of Forks Police  
4 Department; Ed Klahn, a Sergeant for the City of Forks Police Department; and, Lex Prose, a  
5 correctional officer at the City of Forks Jail (“Forks City Defendants”). He also sued Dr. Freeha  
6 F. Bokhari, the treating emergency room physician at the Forks General Hospital. His claims  
7 against Dr. Bokhari have been dismissed with prejudice. ECF No. 75.<sup>2</sup>

9 The claims against the Forks City Defendants include that (1) Defendant Prose forced  
10 Mr. Lloyd to leave the hospital before Dr. Bokhari had completed his medical tests, kept him  
11 from seeking a scheduled follow-up, and refused him the “right to seek any form of medication if  
12 needed”; (2) Fork City Defendants Powell and Klahn ignored his pain; (3) he was placed in  
13 segregation for “at best ten days” for filing a grievance; and, (4) Fork City Defendants  
14 transferred him to the Kitsap County Jail where he could be better monitored in retaliation for his  
15 medical complaints and grievances. Mr. Lloyd claims that he now suffers from kidney damage  
16 and “gastroentero reflex” because Sergeant Klahn failed to provide him with nutritionally  
17 adequate food.  
18

19 Mr. Lloyd asks that the Forks City Defendants be ordered to desist in serving spoiled  
20 food, from interfering with the orders of medical personnel, and help pay for a new kidney in the  
21 future in the event his “other” kidney fails him.  
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24 <sup>2</sup> Mr. Lloyd claimed, in part, that Dr. Bokhari failed to diagnose that he had suffered food poisoning; however, tests  
25 performed at the hospital showed no toxins or damage to Mr. Lloyd’s kidneys. Over a month after his release from  
26 the hospital, Mr. Lloyd made a written request of Dr. Bokhari to change or modify the medical record to reflect that  
he had sustained a kidney injury. ECF No. 21, p. 3. She refused to do so because she did not believe that Mr. Lloyd  
suffered kidney damage. *Id.* This court ruled that Mr. Lloyd had not presented any evidence of “toxic poisoning to  
his kidneys.” ECF No. 45, p. 8.

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2           **FACTS RELATING TO CLAIMS AGAINST FORKS CITY DEFENDANTS**

3           On November 5, 2008, Mr. Lloyd was transferred to the City of Forks Jail under a  
4 contract with Bremerton.<sup>3</sup> ECF No. 4, p. 10 (Plaintiff's Complaint). The Forks Jail has a  
5 maximum capacity of approximately 32 inmates. ECF No. 90, ¶ 3 (Declaration of Mike Powell).  
6 At any given time, only one or two corrections officers are on duty to run the jail and supervise  
7 the inmates. *Id.* The Forks Jail does not have any medical staff on-site. *Id.* If a prisoner is  
8 experiencing medical problems, he is transported to a medical facility, which is usually the Forks  
9 Community Hospital. *Id.*

11           On November 15, 2008, Mr. Lloyd was served a TV-style dinner at the Forks Jail at  
12 about 6:00 p.m. ECF No. 4, ¶ 3. Plaintiff reports that approximately 30 to 45 minutes after  
13 consuming his dinner, he felt sick to his stomach and had to use the restroom. *Id.*, ¶ 6. He had  
14 diarrhea at approximately 7:15 p.m., started feeling nausea, and experienced abdominal pain and  
15 cramps. *Id.* at pp. 10-11.

17           Mr. Lloyd states he spoke with Sgt. Ed Klahn between 7:30 p.m. and 8:00 p.m.,  
18 and Sgt. Klahn informed Mr. Lloyd that he was moving to another unit. ECF No. 4, p. 11, ¶ 12.  
19 Plaintiff continued to feel worse and asked to see a doctor. *Id.*, pp. 11-12. At lights out, Plaintiff  
20 started hitting his cell door, seeking officer attention. *Id.*, p. 13, ¶ 22.

21           Sgt. Klahn arranged to have Mr. Lloyd transported to the Forks Community Hospital,  
22 where he could receive medical attention. ECF No. 88, ¶ 4 (Declaration of Ed Klahn); ECF No.  
23 89, ¶ 3 (Declaration of Lex Prose). Audrey Decker, a corrections officer in training at the time,  
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25 \_\_\_\_\_  
26 <sup>3</sup> Jail records show plaintiff was actually transferred on November 7, 2008. ECF No. 90, Exh. E.

1 was the only officer on duty at the jail that evening. For safety and security reasons, the jail  
2 does not have fewer than two officers on duty to assist in the jail at any given time, so Sgt. Klahn  
3 arranged for Officer Prose, who was off-duty, to come in and transport Mr. Lloyd to the hospital.  
4 ECF No. 88, ¶ 4; ECF No. 89, ¶ 3. Mr. Lloyd was moved to a different area of the jail while he  
5 was awaiting transport so that Officer Decker could closely monitor him, in the event his  
6 condition worsened and an ambulance was needed. ECF No. 88, ¶ 4. Plaintiff was also given  
7 three Tums antacid at 2100 hours. *Id.*, Ex. A. At 1210 hours, Officer Prose transported  
8 Mr. Lloyd to the Forks Community Hospital, where Mr. Lloyd was treated by Dr. Bokhari. ECF  
9 No. 89, ¶ 3; ECF No. 21, pp. 1-4 (Affidavit of Bokhari); and, ECF No. 89, ¶¶ 2-4 (Declaration of  
10 Freeha Bokhari).  
11

12 Officer Prose remained in the room with Mr. Lloyd while Dr. Bokhari treated him. ECF  
13 No. 89, ¶ 3. Dr. Bokhari decided to admit Mr. Lloyd into the hospital overnight. ECF 89, ¶ 3;  
14 ECF No. 21, pp. 1-4. Officer Prose did not observe Mr. Lloyd experience vomiting or diarrhea  
15 while he was in the hospital, and Mr. Lloyd only used the bathroom to urinate. ECF No. 89, ¶ 3.  
16

17 Dr. Bokhari discharged Mr. Lloyd on the morning of November 16, 2008, and Officer  
18 Prose transported him back to the Forks Jail. ECF No. 88, ¶ 5; ECF No. 89, ¶¶ 3-4. Dr. Bokhari  
19 indicated that Mr. Lloyd was in good health and there was no need for further care, unless his  
20 symptoms worsened, in which case jail staff should schedule a follow-up appointment. ECF No.  
21 88, ¶¶ 5-6, Ex. B; ECF No. 89, ¶ 4. Dr. Bokhari diagnosed Mr. Lloyd with “elevated creatine  
22 kinase likely related to muscle damage of unknown etiology,” and “gastroenteritis.” ECF No.  
23 23, Exh. 1, p. 2. She noted that his last bowel movement was on the morning of November 15,  
24 2008. *Id.*, p. 1.  
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1 Mr. Lloyd signed the discharge form deeming him fit to return to jail. *Id.* Dr. Bokhari  
2 made the decision to discharge Mr. Lloyd from the hospital and would not have done so had she  
3 felt he required further medical care at the hospital. ECF No. 89, ¶ 4; ECF No. 87, ¶ 4. Dr.  
4 Bokhari states that Mr. Lloyd was released once she was satisfied, in her independent medical  
5 judgment, that his condition warranted discharge. ECF No. 87, ¶ 4. According to Dr. Bokhari,  
6 the removal of Mr. Lloyd's IV was done appropriately and in a manner consistent with good  
7 medical care. *Id.* Officer Prose had no involvement in the decision to discharge Mr. Lloyd.  
8 ECF No. 89, ¶ 4. Officer Prose did not hurry Dr. Bokhari or any medical staff and never  
9 commanded anyone to remove Mr. Lloyd's IV. *Id.* Mr. Lloyd admits that it was Dr. Bokhari  
10 who discharged him. *See*, ECF No. 42, p. 7.

12 Dr. Bokhari never conveyed to Officer Prose, Sgt. Klahn or any other member of the jail  
13 staff, that Mr. Lloyd was suffering or had suffered from food poisoning, kidney poisoning or that  
14 Mr. Lloyd had any serious medical condition. ECF No. 88, ¶ 5; ECF No. 89, ¶ 7. Sgt. Klahn  
15 denies that he told Plaintiff that Dr. Bokhari had ever made such statements. *Id.*

17 After his discharge from the hospital, Mr. Lloyd submitted two grievances claiming that  
18 he had suffered food poisoning. ECF No. 88, ¶ 6, Ex. C; ECF No. 90, ¶ 5, Ex. C.) After  
19 interviewing other inmates, Sgt. Klahn learned that no other inmates had any sickness or  
20 complaints after dinner on November 15, 2008. ECF No. 88, ¶ 6, Ex. C.) Hospital medical staff  
21 never indicated that Mr. Lloyd had food poisoning or kidney issues. *Id.* Sgt. Klahn checked and  
22 made sure that the frozen meals served on November 15, 2008 were not more than three or four  
23 months old, in accordance with USDA standards. *Id.* He did not find any evidence that  
24 supported Mr. Lloyd's contention that he suffered from food poisoning. *Id.*

1 Chief Powell met with Mr. Lloyd on November 19, 2008 to discuss his grievances. ECF  
2 No. 90, ¶ 6. Mr. Lloyd claimed that Corrections Officer Lex Prose rushed the hospital staff to  
3 discharge him on November 16, 2008 and unhooked his IV. *Id.* Mr. Lloyd also complained that  
4 he had been denied follow-up care. *Id.* Upon investigation, Chief Powell found Mr. Lloyd's  
5 complaints to be unsupported. *Id.* Mr. Lloyd appeared in fine health when Chief Powell spoke  
6 with him and had no apparent discomfort or difficulty. *Id.* Chief Powell found Mr. Lloyd's  
7 grievance to be unfounded and denied it. *Id.* Mr. Lloyd did not complain of any illness or  
8 discomfort during Chief Powell's visit with him. *Id.*, ¶ 6. He gave Chief Powell no indication  
9 that he was experiencing any illness or other medical issues. *Id.* Chief Powell addressed all of  
10 Mr. Lloyd's grievances and left on good terms. *Id.* Chief Powell states that whatever Mr.  
11 Lloyd's ailments were on November 15, 2008, they had resolved. *Id.*

12  
13 On November 19, 2008, Mr. Lloyd also submitted an Inmate Request Form, indicating he  
14 had a follow-up appointment scheduled with Dr. Bokhari on November 20, 2008. ECF No. 88, ¶  
15 7, Ex. D. Mr. Lloyd asked that jail staff bring his DSHS coupon booklet, which was in his  
16 wallet, to the hospital. *Id.* Sgt. Klahn arranged for this to happen. *Id.* Corrections Officer  
17 Brandon Leask transported Mr. Lloyd to his follow-up appointment at the Bogachiel Clinic at the  
18 Forks Community Hospital on November 20, 2008. *Id.* Mr. Lloyd was examined by Dr. Kathy  
19 Shannon. *Id.* Dr. Shannon performed lab work and indicated she would send the results to the  
20 jail. *Id.*, Ex. E. Dr. Shannon circled "Yes" after the question, "Is Patient Fit for Jail?" *Id.*; ECF  
21 No. 23, Ex. 1, p. 10.

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24 On November 23, 2008, Mr. Lloyd submitted an Inmate Request Form, which he filled  
25 out at 8:00 p.m. ECF No. 88, ¶ 8, Ex. F. Mr. Lloyd stated that his kidney and stomach were  
26 hurting and he wanted to see a doctor. *Id.* On November 24, 2008, Mr. Lloyd submitted another

1 Inmate Request Form, again complaining of kidney pain and claiming he was being denied  
2 follow-up care. *Id.*, Ex. G. In response to this request, Sgt. Klahn contacted Mr. Lloyd, who  
3 stated that he wanted to see the doctor again. *Id.* Sgt. Klahn called the Bogachiel Clinic and  
4 clinic staff faxed Mr. Lloyd's lab results from the blood work performed on November 20, 2008  
5 to Sgt. Klahn. *Id.*, Ex. H. In that fax, Dr. Shannon stated that Mr. Lloyd did not require any  
6 medication. *Id.* She also noted on the lab reports that Mr. Lloyd's results were "all good." *Id.*

8 In further follow-up to Mr. Lloyd's request to see Dr. Bokhari again, Sgt. Klahn called  
9 the Bogachiel Clinic on the morning of November 25, 2008 and spoke with receptionist Jana  
10 Williams. ECF No. 88, ¶ 9. Ms. Williams indicated that Dr. Bokhari would not be in until  
11 December 3, 2008, so Sgt. Klahn asked her to have Dr. Kathy Shannon call him back to discuss  
12 Mr. Lloyd's condition. *Id.*, Ex. G. Dr. Shannon called Sgt. Klahn back and he conveyed to her  
13 that Mr. Lloyd was complaining of stomach pain and kidney pain. *Id.* Dr. Shannon said she was  
14 not concerned about his condition, but requested that Sgt. Klahn send her a urine sample from  
15 Mr. Lloyd. *Id.* Mr. Lloyd agreed to provide a urine sample, but was unhappy because he was  
16 not allowed to go to the clinic. *Id.* Sgt. Klahn advised Mr. Lloyd that Dr. Bokhari would not  
17 return to the clinic until December 3, 2008 and Mr. Lloyd said, "okay," or words to that effect.  
18 Sgt. Klahn took this assent to mean that Mr. Lloyd had no objection to waiting to see Dr.  
19 Bokhari. *Id.* Sgt. Klahn states that he never told Mr. Lloyd that the doctor said Mr. Lloyd had  
20 contracted food poisoning or that he had "toxic poisoning" in his kidney. *Id.*

23 Mr. Lloyd's urine sample was taken to the Bogachiel Clinic on November 26, 2008. ECF  
24 No. 88, ¶ 10, Exh. I. The transport officer was unable to take the sample to the clinic on  
25 November 25, 2008 because he was involved in a rape case. *Id.*

26 At 8:50 a.m. on December 1, 2008, Mr. Lloyd submitted a grievance against Sgt. Klahn

1 claiming that Sgt. Klahn was denying him the right to follow-up medical care. ECF No. 88, ¶  
2 11, Ex. J. In response, Sgt. Klahn stated that he was awaiting the results of Mr. Lloyd's  
3 urinalysis. Dr. Shannon had indicated that Mr. Lloyd was not suffering from any cognizable  
4 illness and said that she would wait and see what his urinalysis results showed. *Id.*

5 Mr. Lloyd submitted a similar Medical Request Form on December 1, 2008. *Id.*, Ex. K.  
6 Sgt. Klahn responded and notified Mr. Lloyd that he was awaiting the results of the urinalysis,  
7 consistent with Dr. Shannon's instructions. *Id.*

8  
9 On December 2, 2008, Mr. Lloyd submitted another Inmate Medical Request Form,  
10 complaining that his penis was leaking after urination. ECF No. 88, ¶ 12. Sgt. Klahn responded  
11 to this medical request on December 3, 2008, indicating that jail staff was in the process of  
12 making plans to send him to a different facility that could more closely monitor his condition.  
13 *Id.*, Ex. K.

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15 On December 2, 2008, Mr. Lloyd argued with Officer Prose and he was placed in a  
16 segregated cell. ECF No. 88, ¶ 14; ECF No. 89, ¶ 6, Ex. A; ECF No. 90, ¶ 6, Ex. D. Mr. Lloyd  
17 rang the buzzer for assistance and another corrections officer in-training, Audrey Decker, told  
18 him to wait because she was busy. ECF No. 89, ¶ 6. Mr. Lloyd rang the buzzer again and  
19 demanded attention. *Id.* Officer Prose spoke with Mr. Lloyd and told him to comply with  
20 Officer Decker's request to wait, but Mr. Lloyd began arguing with him. *Id.* Mr. Lloyd states  
21 that he did not argue with Officer Prose on December 1, 2008. ECF No. 113, p. 73 (emphasis  
22 added).

23  
24 Failure to obey a command of a corrections officer and disruptive behavior are  
25 infractions under the Forks Jail Policies and Procedures and under the Washington  
26 Administrative Code. ECF No. 89, ¶ 6, Ex. A. These are serious offenses, in part, because



1 they are known to encourage other inmates to be disobedient and may incite riots. *Id.*

2 According to Sgt. Klahn, Mr. Lloyd was moved to a segregated unit (SHU 2) on  
3 December 2, 2008 for disciplinary reasons after Mr. Lloyd argued and became verbally  
4 combative with Officer Prose.

5 Another reason for placing Mr. Lloyd in SHU 2 was the fact that he was causing too  
6 many disturbances among the other inmates. ECF No. 89, ¶ 6; ECF No. 88, ¶ 14; ECF No. 90, ¶  
7 8, Exs. F and G (complaints from fellow inmates). Because the Forks Jail is so small and has so  
8 few staff members, one disruptive inmate can drain resources and disrupt the processes of the  
9 jail. ECF No. 90, ¶ 8. Mr. Lloyd's behavior created that type of disruption at the jail. *Id.* Aside  
10 from written complaints, jail staff also received verbal complaints regarding Mr. Lloyd's  
11 behavior on a daily basis. *Id.* Mr. Lloyd intimidated the other inmates and failed to get along  
12 with them in a harmonious nature, which disrupted the operation of the jail. *Id.*; ECF No. 88, ¶  
13 14. Several inmates were afraid of Mr. Lloyd because he could be verbally abusive and  
14 threatening. *Id.* A fellow inmate wrote to complain of Mr. Lloyd's bullying and threatening  
15 behavior. *Id.*, ¶ 8, Exh. E. On December 2, 2008, the day Mr. Lloyd was moved to SHU 2, four  
16 of his fellow inmates sent a "kite" requesting that Mr. Lloyd not be placed in the same cell as  
17 them. *Id.*, ¶ 8, Exh. G.

18 Sgt. Klahn felt that best way to avoid subjecting other inmates to Mr. Lloyd's abusive  
19 behavior and threats was to segregate him and, in light of his constant medical complaints,  
20 segregation would also be appropriate as the jail does not have a designated holding cell for  
21 inmates complaining of illness. *Id.*; ECF No. 90, ¶ 6, Exhs. D and E.

22 Mr. Lloyd was in SHU 2 for only three days, from December 2, 2008 thru December 5,  
23 2008. ECF No. 90, ¶ 6, Exh. D and E. Mr. Lloyd was in Block #3 from November 7, 2008 to

1 November 15, 2008. *Id.* He was moved to Block #2 on November 15, 2008 because he was not  
2 getting along with the inmates in Block #3. *Id.* Block #2 is not a segregation unit. *Id.* During  
3 non-lockdown hours, the doors of the cells are open and the inmates can freely move about and  
4 commingle in the dayroom. *Id.*

5         The segregation unit, SHU 2, is in direct sight of the control booth in which the  
6 corrections officer on duty sits and monitors inmate activities, so it is also a sensible location to  
7 place an inmate complaining of illness. ECF No. 89, ¶ 6; ECF No. 90, ¶ 6. If the inmate needs  
8 something, he is within the corrections officer's sight. *Id.* Additionally, the Forks Jail does not  
9 have a separate location for housing sick inmates, so as a practical matter, inmates complaining  
10 of illness are sometimes placed in SHU 2 to protect the rest of the inmates from illness. ECF No.  
11 90, ¶ 9; ECF No. 88, ¶ 14.)

12         According to Sgt. Klahn and Chief Powell, Mr. Lloyd was never placed in segregation or  
13 lock-down in retaliation for his complaints or grievances. ECF No. 88, ¶ 14; ECF No. 90, ¶ 6.)

14         On December 4, 2008, Sgt. Klahn received Mr. Lloyd's urinalysis results via fax. ECF  
15 No. 88, ¶ 13. The results were negative for any abnormalities. *Id.* Per Dr. Shannon's  
16 instructions, Mr. Lloyd required no follow-up medical care. *Id.*; ECF No. 23, Ex. 1, p. 8.)

17         On the medical questionnaire intake form completed when Mr. Lloyd was processed into  
18 the Forks City Jail on November 5, 2008, Mr. Lloyd indicated that he suffered from "acid  
19 reflux." ECF No. 119, p. 12.<sup>4</sup> Mr. Lloyd also stated that he was currently taking prescription  
20 medication, but the medication is not identified. *Id.*

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26 <sup>4</sup> The intake questionnaire reflects a date of "10/05/2010" because that is when the computer was queried to print out  
a copy of the questionnaire. ECF No. 119, p. 11.

1 According to Chief Powell, the Forks Jail staff understood that Mr. Lloyd was not  
2 suffering from any serious medical problems once he was discharged from the hospital on  
3 November 16, 2008. This understanding was based on the information they received from Mr.  
4 Lloyd's doctors and medical staff. ECF No. 90, ¶ 7. Based on multiple reports from other  
5 inmates, Chief Powell and the Forks Jail staff understood that Mr. Lloyd was either exaggerating  
6 or making up symptoms altogether. *Id.* Despite these reports, Chief Powell and Forks Jail staff  
7 took his complaints seriously and worked to make sure they were addressed in a timely manner.  
8 *Id.*

10 Mr. Lloyd was transferred to the Kitsap County Jail on December 5, 2008. According to  
11 Chief Powell, the decision to transfer Mr. Lloyd was based on his disruptive behavior, his failure  
12 to work in a harmonious nature with other inmates, and his high demands for staff attention.  
13 ECF No. 90, ¶ 9. The Kitsap County Jail is a larger facility with more staff on-hand and Chief  
14 Powell felt it was better suited to provide Mr. Lloyd with the environment he required. *Id.* Chief  
15 Powell states that the decision to transfer Mr. Lloyd was not based in any way on his complaints  
16 or grievances. *Id.*, Ex. H.

18 In recommending that Mr. Lloyd's claims against Dr. Bokhari be dismissed with  
19 prejudice, this court found that Mr. Lloyd provided no competent evidence that Dr. Bokhari was  
20 deliberately indifferent to his medical needs when she treated and diagnosed him. ECF No. 75,  
21 p. 3; ECF No. 87, ¶ 3. This court also found that Mr. Lloyd provided no competent medical  
22 evidence reflecting that he had suffered food poisoning and/or "toxic poisoning" to his kidneys,  
23 or that his gastritis and GERD were in any way related to the treatment Dr. Bokhari provided on  
24 November 16, 2008. ECF No. 45, p. 8. The court also concluded that Mr. Lloyd had failed to  
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1 present any evidence of actual injury attributable to Dr. Bokhari's medical treatment or lack of  
2 treatment. ECF No. 75, p. 4.

### 3 SUMMARY JUDGMENT STANDARD

4 Summary judgment will be granted when there is no genuine issue as to any material fact  
5 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The party  
6 seeking summary judgment bears the initial burden of informing the court of the basis for its  
7 motion, and of identifying those positions of the pleadings and discovery responses that  
8 demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S.  
9 317, 323, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986).

11 Where the moving party will have the burden of proof at trial, it must affirmatively  
12 demonstrate that no reasonable trier of fact could find other than for the moving party.  
13 *Calderone v. United States*, 788 F.2d 254, 259 (6<sup>th</sup> Cir. 1986). On an issue where the  
14 nonmoving party will bear the burden of proof at trial, the moving party can prevail merely by  
15 pointing out to the district court that there is an absence of evidence to support the non-moving  
16 party's case. *Celotex*, 477 U.S. at 325. If the moving party meets its initial burden, the opposing  
17 party must then set forth specific facts showing that there is some genuine issue for trial in order  
18 to defeat the motion. *Anderson v. Liberty Lobby*, 477 U.S. 242, 250, 106 S. Ct. 2502, 91 L.Ed.2d  
19 202 (1986). The party opposing the motion must do more than simply show that there is some  
20 metaphysical doubt as to the material facts. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475  
21 U.S. 574, 586 (1986). "A plaintiff's belief that a defendant acted from an unlawful motive,  
22 without evidence supporting that belief, is no more than speculation or unfounded accusation  
23 about whether the defendant really did act from an unlawful motive." *Carmen v. San Francisco*  
24 *Unified School Dist.*, 237 F.3d 1026, 1028 (9th Cir. 2001).

1 The Ninth Circuit has expressly stated that “[n]o longer can it be argued that any  
2 disagreement about a material issue of fact precludes the use of summary judgment. *California*  
3 *Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir.  
4 1987), *cert. denied*, 484 U.S. 1006 (1988). A plaintiff cannot rest upon the allegations in his  
5 complaint, but must establish each element of his claim with “significant probative evidence  
6 tending to support the complaint.” *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n.*, 809  
7 F.2d 626, 630 (9th Cir. 1980). A party opposing a motion must present facts in evidentiary form  
8 and cannot rest upon the pleadings. *Anderson*, 477 U.S. 242. Genuine issues of material fact are  
9 not raised by conclusory or speculative allegations. *Lujan*, 497 U.S. 871. The purpose of  
10 summary judgment is not to replace conclusory allegations in pleading form with conclusory  
11 allegations in an affidavit. *Lujan*, 497 U.S. at 888; *cf. Anderson*, 477 U.S. at 249. Bare  
12 assertions unsupported by evidence do not preclude summary judgment. *California*  
13 *Architectural Bldg. Prods., supra*.

#### 14 **MOTION TO STRIKE**

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17 The Fork City Defendants move to strike as extraneous and immaterial any argument  
18 contained in Mr. Lloyd’s opposition relating to a First Amendment retaliation claim, claims  
19 brought under 42 U.S.C. § 1982, 1985, 1986 and 1997, the Washington Product Liability Act,  
20 and/or the Washington Consumer Protection Act, because the court previously denied Plaintiff’s  
21 motion to amend seeking to assert these claims. ECF No. 108. In addition, Mr. Lloyd invoked §  
22 1997 for the first time in his response brief and as such, any claim under that statute is not  
23 properly plead and should not be considered.  
24

25 A motion to strike is proper when a pleading contains “any redundant, immaterial,  
26 impertinent, or scandalous matter.” Fed. R. Civ. Proc. 12(f). Striking irrelevant content from the

1 pleadings helps “avoid the costs that arise from litigating spurious issues by dispensing with  
2 those issues prior to trial.” *See, e.g., Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th  
3 Cir.1983)). The Fork City Defendants’ motion to strike arguments contained in Mr. Lloyd’s  
4 pleading that are not related to claims raised in his complaint is granted. However, the court will  
5 address the merits of Mr. Lloyd’s claim of retaliation because, construed liberally, this claim  
6 may be reasonably inferred from his original complaint. *See*, ECF No. 4, pp. 20-21.<sup>5</sup>

8 The Fork City Defendants also move to strike as conclusory and unsupported all  
9 contentions that Mr. Lloyd suffered from “toxic poisoning” to his kidney and that he suffered  
10 from a “serious medical condition,” as Mr. Lloyd has no medical training or qualifications that  
11 allow him to provide expert testimony on these issues. ECF No. 115, p. 2 (*citing* Fed. R. Evid.  
12 701, 702). This court previously ruled that Mr. Lloyd presented no evidence of “toxic  
13 poisoning” to his kidneys to support a claim against Dr. Bokhari. ECF No. 45, p. 8. However,  
14 whether Mr. Lloyd suffered a serious medical condition that the Forks City Defendants knew  
15 about and ignored, is a matter of proof and not pleading. Accordingly, the motion to strike is  
16 denied in this regard.

#### 18 **RULE 56(f) MOTION**

19 In his response, Mr. Lloyd asks that the Fork City Defendants’ motion for summary  
20 judgment be denied because they have failed to produce any “relevant discovery information,”  
21 which is the subject of his motion to compel. ECF No. 112-1 (citing ECF No. 73). The court  
22 denied that motion to compel on August 30, 2010. ECF No. 101. Mr. Lloyd also fails to set  
23 forth with specificity what additional discovery is required and how it will create a genuine issue  
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26 <sup>5</sup>Accordingly, Mr. Lloyd’s request that the court reconsider its previous denial of his motion to amend to include a  
First Amendment retaliation claim is denied as moot. *See* ECF No. 108 (Order Denying Motion to Amend)

1 of material fact to preclude summary judgment. *See Margolis v. Ryan*, 140 F.3d 850, 853 (9<sup>th</sup>  
2 Cir. 1998) (*citing Garrett v. City and County of San Francisco*, 818 F.2d 1515, 1518 (9th  
3 Cir.1987) (In making a Rule 56(f) motion, a party opposing summary judgment “must make  
4 clear what information is sought and how it would preclude summary judgment.”)).  
5 Accordingly, Plaintiff’s Rule 56(f) motion should be denied.<sup>6</sup>

## 6 DISCUSSION

### 7 **A. Eighth Amendment Claim – Denial of Medical Care and Deliberate Indifference**

8 In order to sustain a cause of action under 42 U.S.C. § 1983, a plaintiff must show (i) that  
9 he suffered a violation of rights protected by the Constitution or created by federal statute, and  
10 (ii) that the violation was proximately caused by a person acting under color of state law. *See*  
11 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9<sup>th</sup> Cir. 1991). The causation requirement of § 1983 is  
12 satisfied only if a plaintiff demonstrates that a defendant did an affirmative act, participated in  
13 another’s affirmative act, or omitted to perform an act which he was legally required to do that  
14 caused the deprivation complained of. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9<sup>th</sup> Cir. 1981)  
15 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9<sup>th</sup> Cir. 1978)).

16 The Eighth Amendment requires prison officials to take reasonable measures to  
17 guarantee the health and safety of inmates. An official is deliberately indifferent to a serious  
18 medical need if the official “knows of and disregards an excessive risk to inmate health or  
19 safety.” *Id.* at 837. Deliberate indifference requires more culpability than ordinary lack of due  
20 care for a prisoner’s health. *Id.* at 835. In assessing whether the official acted with deliberate  
21 indifference, a court’s inquiry must focus on what the prison official actually perceived, not what  
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25 <sup>6</sup> Supplemental discovery responses and additional records from the Forks City Jail including Mr. Lloyd’s booking  
26 form, medication log, medical questionnaire form, were sent to Mr. Lloyd on October 8 and 13, 2010. *See* ECF  
Nos. 119 and 120 (Declarations of William R. Fleck and Thomas P. Miller).

1 the official should have known. *See Wallis v. Baldwin*, 70 F.3d 1074, 1077 (9th Cir. 1995). If  
2 one of the components is not established, the court need not inquire as to the existence of the  
3 other. *Helling*, 509 U.S. at 25.

4 Prison authorities have “wide discretion” in the medical treatment afforded prisoners.  
5 *Stiltner v. Rhay*, 371 F.2d 420, 421 (9th Cir.), *cert. denied*, *Stiltner v. Washington*, 387 U.S. 922,  
6 87 S. Ct. 2038, 18 L. Ed. 2d 977 (1967). To prevail on an Eighth Amendment medical claim, the  
7 plaintiff must “show that the course of treatment the doctors chose was medically unacceptable  
8 under the circumstances . . . and the plaintiff must show that they chose this course in conscious  
9 disregard of an excessive risk to plaintiff’s health.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th  
10 Cir.), *cert. denied*, *McIntosh v. Jackson*, 519 U.S. 1029, 117 S. Ct. 584, 136 L. Ed. 2d 514  
11 (1996). A claim of mere negligence or harassment related to medical problems is not enough to  
12 make out a violation of the Eighth Amendment. *Franklin v. State of Oregon, State Welfare*  
13 *Division*, 662 F.2d 1337, 1344 (9th Cir. 1981). Simple malpractice, or even gross negligence,  
14 does not constitute deliberate indifference. *McGuckin*, 974 F.2d at 1059. Similarly, a difference  
15 of opinion between a prisoner-patient and prison medical authorities regarding what treatment is  
16 proper and necessary does not give rise to a § 1983 claim. *Franklin*, 662 F.2d at 1344; *Mayfield*  
17 *v. Craven*, 433 F.2d 873, 874 (9th Cir. 1970).

18 The court has already held that Mr. Lloyd received proper and adequate medical care  
19 from Dr. Bokhari and that Mr. Lloyd’s claims that he suffered from food poisoning and/or “toxic  
20 poisoning” in his kidneys are conclusory and unfounded. Similarly, Mr. Lloyd has presented no  
21 expert testimony or other competent evidence in response to the Forks City Defendants’ motion  
22 for summary judgment, to show that he suffered from any medical need. Mr. Lloyd also makes  
23 the unsupported claim that Officer Prose hampered his medical treatment by rushing his  
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1 discharge and ordering that his IV be removed prematurely. However, Dr. Bokhari stated in her  
2 declaration that only authorized medical personnel can approve the discharge of a patient; that  
3 she approved the discharge of Mr. Lloyd; and, that the IV was removed appropriately and in a  
4 manner consistent with good medical care. Thus, and even assuming Mr. Lloyd's allegations  
5 regarding Officer Prose are correct, Mr. Lloyd has failed to raise a question of material fact that  
6 he was, in fact, denied appropriate medical care.  
7

8 Assuming, for purposes of this motion only that Mr. Lloyd did have a serious medical  
9 need, it is undisputed that the Fork City Defendants responded to his complaints and arranged for  
10 him to receive medical treatment from the hospital physicians. The record reflects that the Fork  
11 City Defendants reacted quickly to Mr. Lloyd's complaint that his meal gave him food  
12 poisoning. Officer Prose was summoned from home to transport Mr. Lloyd to the hospital. Dr.  
13 Bokhari provided proper medical care and treatment and then authorized his release. In addition,  
14 none of Mr. Lloyd's medical treatment providers found that he was suffering from any serious  
15 medical need. Both Dr. Bokhari and Dr. Shannon deemed him fit to return to jail after they saw  
16 and treated him. Dr. Shannon assured Sgt. Klahn that Mr. Lloyd did not require any additional  
17 treatment, except a urinalysis, which was performed and given to the hospital for analysis. The  
18 evidence submitted by Mr. Lloyd confirms that after the results from the urinalysis were known,  
19 Sgt. Klahn was advised that "no medication was needed." *See*, ECF No. 113, p. 34.  
20

21 Mr. Lloyd maintains that Dr. Bokhari informed him of "high levels of toxic poison in his  
22 kidneys," that this information was relayed to Sgt. Klahn and that Sgt. Klahn, in turn, relayed the  
23 information to Mr. Lloyd. These disputed facts do not raise an issue of material fact sufficient  
24 to defeat summary judgment because the record reflects that Mr. Lloyd did not have high levels  
25 of toxic poison in his kidneys; that none of the tests performed indicated that Mr. Lloyd's kidney  
26

1 or kidneys were damaged; or that the dinner he consumed was linked to his elevated CPK levels.

2 *See, e.g.*, ECF No. 21, p. 3.<sup>7</sup>

3       There is also no evidence that Mr. Lloyd had a “serious medical need for medication for  
4 Gastroenteritis,” as he claims in his response. *See* ECF No. 112-1, pp. 21 and 24. Even if Mr.  
5 Lloyd suffers from gastroenteritis, there is no competent medical evidence in the record to  
6 support his contention that the “gastroenteritis” constituted a serious medical need or that it is  
7 somehow linked to his claim that he suffered from food poisoning. Certainly, medical records  
8 reflecting that Mr. Lloyd had a history of gastroenteritis “from 1989 until 2003,” have no  
9 relevance to his claim that he now suffers from gastroenteritis because he contracted food  
10 poisoning from a meal served to him in 2008. *See* ECF No. 113, p. 5 and Exh. N. The record  
11 does reflect that Dr. Bokhari noted in her assessment that Mr. Lloyd had gastroenteritis and that  
12 his current medications included Prilosec. ECF No. 113, Exh. O (pp. 52 and 53). However,  
13 there is no evidence that Dr. Bokhari prescribed any medication for that condition or that the  
14 Fork City Defendants possessed and withheld medication from Mr. Lloyd.

15       The record also reflects that when Mr. Lloyd was booked into the Forks City Jail, he  
16 reported that he suffered from “acid reflux” and that he was taking some unidentified  
17 medication. ECF No. 120-1, p. 6. However, the jail’s medication log reflects only that Mr.  
18 Lloyd was given Tums, ibuprofen and Tylenol on November 15, 2008, November 17, 2008 and,  
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20 <sup>7</sup> In the course of her treatment of Mr. Lloyd, Dr. Bokhari explained to him that his CPK level was high and that  
21 very high levels of CPK can potentially cause damage to the kidneys and that is why she administered fluids and  
22 monitored closely. ECF No., 21, p. 2. According to Dr. Bokhari, “CPK is an abbreviation for Creatine  
23 phosphokinase, an enzyme found mainly in the heart, brain and skeletal muscle. If the CPK level is high, it usually  
24 means there has been injury or stress to the heart, the brain or muscle tissue. For example, when a muscle is  
25 damaged, CPK leaks into the bloodstream. High CPK levels may be seen in patients who have experienced a heart  
26 attack, stroke or other injury to skeletal muscles.” *Id.* Test results for Mr. Lloyd indicated a CPK level  
approximately five times higher than the upper limits of normal, but cardiac enzymes and EKG were normal. *Id.*

1 November 20, 2008, respectively. CEF No. 120, pp. 15-16. None of Mr. Lloyd's medical  
2 request forms or grievances mentions prescription medications or otherwise put the Fork City  
3 Defendants on notice that he needed to take any prescribed medicine.<sup>8</sup> In fact, as noted above,  
4 after the last test (urinalysis) was performed, Sgt. Klahn was advised that Mr. Lloyd required no  
5 medications.

6 This court has already examined Mr. Lloyd's contention that treatment he later received  
7 in March is somehow related to his claim that he suffered food poisoning, and found the claim to  
8 be without merit.<sup>9</sup> Mr. Lloyd has provided no competent evidence to the contrary. More  
9 importantly, Mr. Lloyd lacks the medical expertise to link his symptoms or illness to food  
10 poisoning. Nor is he able to show that any illness he suffered was a result of a particular meal he  
11 ate.  
12

13 After viewing the summary judgment evidence in the light most favorable to Mr. Lloyd,  
14 the undersigned concludes that his Eighth Amendment claim that the Forks City Defendants  
15 were deliberately indifferent to his medical needs fails as a matter of law. Mr. Lloyd has  
16 provided no evidence that any act or omission by the Fork City Defendants violated his  
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22 <sup>8</sup> Mr. Lloyd refers to jail officials interfering with his efforts to have Prilosec purchased and delivered to him in jail.  
23 However, the records submitted by Mr. Lloyd indicate that this incident occurred in January of 2009, when he was  
incarcerated at the Kitsap County Jail. *See, e.g.*, ECF No. 4, ¶¶ 76-78; ECF No. 9, pp. 25-29.

24 <sup>9</sup> Mr. Lloyd was seen by Dr. Yuen S. Yee at the Harrison Medical Center in Bremerton on March 26, 2009 and  
25 March 31, 2009 where an esophagogastroduodenoscopy, gastric biopsy and esophageal polyp biopsy were  
performed "to rule out possible ulcers, hiatal hernia and esophagitis." *See e.g.*, ECF No. 35-2, p. 14. Dr. Yee noted  
26 that "the patient has a history of H. Pyloric gastritis and GERD." ECF No. 35-2, p. 11. However, there is no  
competent medical evidence in the record that treatment of Mr. Lloyd for gastritis and heartburn has any connection  
to his earlier treatment by Dr. Bokhari on November 16, 2008 for elevated CPK levels. ECF No. 45, p. 7.

1 constitutional rights. Therefore, the undersigned recommends that the Forks City Defendants'  
2 motion for summary judgment be granted on Mr. Lloyd's Eighth Amendment claims.<sup>10</sup>

### 3 **B. Retaliation**

4 Mr. Lloyd alleges that he was placed in segregation on November 23, 2008 to "chill" his  
5 grievances and that the Forks City Defendants transferred him to the Kitsap County Jail on  
6 December 5, 2008 in retaliation because he filed grievances. ECF No. 4, pp. 20-21.

7  
8 A plaintiff can establish that his First Amendment rights have been adversely affected by  
9 retaliatory conduct only when the plaintiff shows that: (1) the plaintiff was engaged in a  
10 constitutionally protected activity; (2) the defendant's adverse action caused the plaintiff to  
11 suffer an injury that would likely chill a person of ordinary firmness from continuing to engage  
12 in that activity; and (3) the adverse action was motivated at least in part as a response to the  
13 exercise of plaintiff's constitutional rights. *Mendocino Environmental Center v. Mendocino*  
14 *County*, 192 F.3d 1283, 1300-01 (9th Cir. 1999). Challenges to institutional restrictions that are  
15 asserted to inhibit First Amendment interests must also be analyzed in terms of the legitimate  
16 policies and goals of the corrections system. *Pell v. Procunier*, 417 U.S. 817 (1974).

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18 <sup>10</sup> Mr. Lloyd's claim that the Fork City Defendants violated his Fourteenth Amendment rights by acting with  
19 deliberate indifference to his medical needs is subsumed by his Eighth Amendment claim on the same facts. The  
20 Fourteenth Amendment offers no greater protection than the Eighth Amendment which, in fact, serves as the  
21 primary source of protection. *See Whitley v. Albers*, 475 U.S. 312, 106 S. Ct. 1078, 89 L.Ed.2d 251 (1986). As  
22 noted by the Supreme Court in *Whitley*, it would be surprising if "conduct that shocks the conscience or affords  
23 brutality the cloak of law, and so violates the Fourteenth Amendment, were not also punishment inconsistent with  
24 contemporary standards of decency and repugnant to the conscience of mankind, in violation of the Eighth." *Id.*  
25 (internal citations omitted). Mr. Lloyd did not allege violation of the Fourteen Amendment with regard to his  
26 placement in segregation. ECF No. 4. In any event, the Due Process Clause "does not of its own force create a  
liberty interest in freedom from administrative segregation." *Hewitt v. Helms*, 459 U.S. 460, 468, 103 S.Ct. 864, 74  
L.Ed.2d 675 (1983)). Administrative segregation is the sort of confinement that inmates should reasonably  
anticipate receiving at some point in their incarceration. *See, e.g., Sandin v. Conner*, 515 U.S. 472, 480, 115 S.Ct.  
2293, 132 L.Ed.2d 418 (1995) (Due Process Clause alone confers no liberty interest in freedom from state action  
taken within sentence imposed). Even assuming that a liberty interest existed, Mr. Lloyd presented no evidence  
reflecting that the conditions he experienced in the segregation unit constituted an atypical and significant hardship  
in relation to the ordinary incidents of prison life. And, as far as the court can discern, Mr. Lloyd was not infracted  
for the behavior on which his three day segregation was based.

1 The Ninth Circuit has consistently held that prison staff may not retaliate against inmates  
2 for exercising their constitutional rights to file lawsuits and grievances. *Rizzo v. Dawson*, 778  
3 F.2d 527 (9th Cir. 1983); *Barnett v. Centoni*, 31 F.3d 813 (9th cir. 1994); *Pratt v. Rowland*, 65  
4 F.3d 802 (9th Cir. 1995); *Rhodes v. Robinson*, 408 F.3d 559 (9th Cir. 2005).

5 It is undisputed that after Mr. Lloyd filed grievances and/or “medical request forms”  
6 relating to his medical care, he was placed in segregation, and three days later, he was transferred  
7 to the Kitsap County Jail. *See, e.g.*, ECF No. 88, ¶ 11, Exhs. J. and K; ECF No. 88, ¶ 12. Thus,  
8 viewing these facts in the light most favorable to Mr. Lloyd, the undersigned concludes that there  
9 is sufficient evidence to raise material issues of fact with regard to the first two elements of his  
10 retaliation claim – i.e., that he was engaged in constitutionally protected activity and that the  
11 Fork City Defendants took adverse action against him sufficient to “chill” the filing of his  
12 grievances. *See, e.g., Rhodes v. Robinson*, 380 F.3d 1183, 1131 (9th Cir.2004) (“Our cases, in  
13 short, are clear that any retribution visited upon a prisoner due to his decision to engage in  
14 protected conduct is sufficient to ground a claim of unlawful First Amendment retaliation -  
15 whether such detriment “chills” the plaintiff’s exercise of his First Amendment rights or not.”);  
16 *see also Resnick v. Hayes*, 213 F.3d 443, 449 (9<sup>th</sup> Cir. 2000); *Hines v. Gomez*, 108 F.3d 265, 269  
17 (9th Cir.1997).

18 Mr. Lloyd’s retaliation claim fails, however, because he cannot show that either his  
19 placement in segregation or his transfer were motivated, at least in part, in response to the  
20 exercise of his right to file grievances.

21 A retaliation claim is not stated where the prisoner does not allege that the defendants’  
22 actions caused him some injury, *Resnick*, 213 F.3d 443, 449 (9th Cir.2000), or, in the case of  
23 alleged retaliatory transfer, if the decision may be upheld on a constitutionally valid basis, *Sher*

1 v. *Coughlin*, 739 F.2d 77, 82 (2d Cir.1984). Retaliation is not proven by simply showing that a  
2 defendant prison official took adverse action after he knew that the plaintiff prisoner had  
3 engaged in constitutionally protected activity. Although timing can be considered as  
4 circumstantial evidence of retaliatory event, timing alone cannot establish retaliation. *See Pratt v.*  
5 *Rowland*, 65 F.3d at 808.

6  
7 Here, there is no evidence of retaliation except for timing. The summary judgment  
8 evidence reflects, and Mr. Lloyd has provided no evidence to the contrary, that the decision to  
9 place him in segregation was based on his behavior. The evidence reflects that Mr. Lloyd was  
10 placed in SHU 2, a segregated cell based on the Fork City Jail's disciplinary policy after Mr.  
11 Lloyd was argumentative with and insubordinate to Officer Prose. ECF No. 89, ¶ 6, Ex. A. Mr.  
12 Lloyd disputes only that he engaged in any argument with Officer Prose the day before he was  
13 disciplined, on December 1, 2008. ECF No. 113, p. 73.

14  
15 There is also evidence that Mr. Lloyd intimidated and threatened other inmates, was  
16 disruptive to the day-to-day operations of the jail, and drained staff resources. ECF No. 88, ¶ 14.  
17 Mr. Lloyd was causing disturbances among other inmates. ECF No. 89, ¶ 6; ECF No. 88, ¶ 14;  
18 ECF No. 90, ¶ 8, Exs. F and G (complaints from fellow inmates). According to Sgt. Klahn, the  
19 best way to avoid subjecting other inmates to Mr. Lloyd's abusive behavior and threats was to  
20 segregate him. In light of Mr. Lloyd's constant medical complaints, Sgt. Klahn believed  
21 segregation would also be appropriate as the jail does not have a designated holding cell for  
22 inmates complaining of illness. *Id.*; ECF No. 90, ¶ 6, Exhs. D and E. Also, the evidence reflects  
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26

1 that Mr. Lloyd was placed in segregation for only three days, from December 2, 2008 until his  
2 transfer to Kitsap County Jail on December 5, 2008. ECF No. 90, ¶ 6, Exh. D and E.<sup>11</sup>

3 Similarly, Mr. Lloyd's claim that the Fork City Defendants transferred him to Kitsap  
4 County Jail on December 5, 2008 as an act of retaliation is unsupported. In his declaration,  
5 Chief Powell states that the decision to transfer Mr. Lloyd was based on Mr. Lloyd's disruptive  
6 behavior, his failure to work in a harmonious nature with other inmates, and his high demands  
7 for staff attention. ECF No. 90, ¶ 9. According to Chief Powell, the Kitsap County Jail is a  
8 larger facility with more staff on-hand, which was better able to meet Mr. Lloyd's needs. *Id.*;  
9 ECF No. 88, ¶ 12, Ex. L. Mr. Lloyd's high demands for medical monitoring were another  
10 reason supporting the decision to transfer him back to Kitsap County Jail. *See, e.g.* ECF No. 88,  
11 Ex. L ("We are making plans to send you to a place that can closely monitor your condition.")  
12

13 As noted above, the prisoner bears the burden of pleading and proving absence of  
14 legitimate correctional goals for the conduct of which he complains. *Pratt*, 65 F.3d at 806. At  
15 that point, the burden shifts to the prison official to show, by a preponderance of the evidence,  
16 that the retaliatory action was narrowly tailored to serve a legitimate penological purpose. *See*  
17 *Schroeder v. McDonald*, 55 F.3d 454, 461-62 (9th Cir.1995) (defendants had qualified immunity  
18 for their decision to transfer prisoner to preserve internal order and discipline and maintain  
19 institutional security).  
20

21 The Fork City Defendants contend that the decision to place Mr. Lloyd in SHU 2 had  
22 nothing to do with his grievances, but advanced the legitimate goals of disciplining Mr. Lloyd  
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24  
25 <sup>11</sup>Jail records reflect that the remainder of Plaintiff's time was spent in Block # 3 (November 7, 2008 to November  
26 15, 2008); and Block 2 from November 15, 2008 until December 2. Block 2 is not a segregation unit (doors are  
open during non-lockdown hours and inmates move freely and commingle in the day room. ECF No. 90, ¶ 6, Exhs.  
D and E.

1 after he was verbally combative with Officer Prose, protecting other inmates who were bullied  
2 and threatened by Mr. Lloyd, and protecting the resources and processes of the jail. *See, e.g.*,  
3 ECF No. 90, ¶ 8. According to Chief Powell, the segregation cell doubles as a place to house  
4 inmates complaining of illness because the jail does not have a sick call room. Thus, Mr.  
5 Lloyd's ongoing medical complaints served as a secondary reason for placing him in segregation  
6 as he could be better served by the corrections officer on-duty in the booth. *Id.*, ¶ 9. Mr. Lloyd  
7 argues that a material issue of fact is raised within the declarations of Sgt. Klahn and Chief  
8 Powell because one states that he was placed in SHU 2 for disciplinary reasons and the other  
9 states that he was placed there because his kidneys were burning. ECF No. 112-1, p. 21. A fair  
10 reading of these declarations, however, is that Mr. Lloyd was initially placed in the SHU 2  
11 because he was argumentative and combative with Officer Prose and the segregation room was  
12 also a logical place to keep him to monitor his medical complaints.  
13

14  
15 The Fork City Defendants also contend that the decision to transfer Mr. Lloyd to Kitsap  
16 County Jail had nothing to do with Mr. Lloyd's grievances, but advanced the legitimate goals of  
17 preserving jail resources and providing Mr. Lloyd with a facility better suited to meet his needs.  
18 ECF No. 90, ¶ 9. Mr. Lloyd argues, in part, that Fork City Defendants' claim is false because,  
19 when he arrived at Kitsap County Jail, the medical staff there stated "upon chart review and  
20 records from Forks Community Hospital medical documentation does not support your claim."  
21 ECF No. 112-1, p. 20. Contrary to Mr. Lloyd's argument, this evidence tends to confirm that  
22 Mr. Lloyd was not suffering from any serious medical problems once he was discharged from  
23 the hospital on November 16, 2008.  
24

25 Retaliation claims brought by prisoners must be evaluated in light of concerns over  
26 "excessive judicial involvement in day-to-day prison management, which 'often squander[s]



1 judicial resources with little offsetting benefit to anyone.’” *Pratt*, 65 F.3d at 807 (*quoting Sandin*  
2 *v. Conner*, 515 U.S. 472, 482, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995)). In particular, courts  
3 should “‘afford appropriate deference and flexibility’ to prison officials in the evaluation of  
4 proffered legitimate penological reasons for conduct alleged to be retaliatory.” *Id.* (*quoting*  
5 *Sandin*, 515 U.S. at 482).

6  
7 The undersigned concludes that such deference is warranted here, where the Fork City  
8 Defendants have shown that placing Mr. Lloyd in segregation for two days for disciplinary  
9 reasons and transferring him to another prison where his needs could be better tended, were  
10 narrowly tailored means to serve legitimate penological purposes of discipline and preserving the  
11 order, security and resources of the jail.

12 Having reviewed the pleadings and all submitted papers on this matter, the undersigned  
13 finds that Mr. Lloyd’s allegations do not establish that the Fork City Defendants acted in  
14 retaliation when they placed in him in segregation or when they transferred him. Accordingly,  
15 the undersigned recommends that Fork City Defendants’ motion for summary judgment on Mr.  
16 Lloyd’s retaliation claims be granted.

## 18 CONCLUSION

19 Based in the foregoing, the undersigned recommends that that Fork City Defendants’  
20 motion for summary judgment (ECF No. 86) be **GRANTED** and that Plaintiff’s claims against  
21 them be **dismissed with prejudice**.

22  
23 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
24 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
25 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
26 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the

1 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on  
2 **November 26, 2010**, as noted in the caption.

3  
4 DATED this 8th day of November, 2010.

5   
6 Karen L. Strombom  
7 United States Magistrate Judge  
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